

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

Senate Bill 463

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MAYNARD, AZINGER, PHILLIPS, TAKUBO, WOODRUM,
TARR, AND ROBERTS

[Originating in the Committee on the Judiciary;
reported on February 21, 2022]

1 A BILL to amend and reenact §48-9-102 of the Code of West Virginia, 1931, as amended; to
2 amend said code by adding thereto a new section, designated §48-1-102a; to amend and
3 reenact §48-9-203, §48-9-204, §48-9-205, §48-9-206, §48-9-207, §48-9-208, §48-9-209,
4 §48-9-401, §48-9-402, §48-9-602, and §48-9-603 of said code, all relating generally to
5 allocation of legal custody and parenting time in domestic relations matters; establishing
6 collaborative parenting as a goal in allocation of custodial responsibility and decision-
7 making; creating a rebuttable presumption that equal (50-50) custodial allocation is in a
8 child's best interest; requiring specific findings and legal conclusions by the court if equal
9 (50-50) parenting is not granted; establishing criteria for diverging from equal (50-50)
10 custodial allocation when it is sought; authorizing interlocutory appeals to the Intermediate
11 Court of Appeals if the family court refuses all physical custody to a parent or denies equal
12 (50-50) custody when sought; requiring consideration of certain factors in developing a
13 temporary parenting plan; ensuring that permanent parenting plans include provisions for
14 financial support of children; requiring court not to consider temporary allocation of
15 physical custody in final order unless parties agreed on temporary terms; removing
16 provisions requiring consideration of terms in temporary orders when drafting final orders;
17 requiring consideration of parents' ability or inability to work together in allocating
18 significant decision-making responsibilities; clarifying consideration for courts in
19 developing or approving parenting plans; setting forth optional considerations for a court
20 in allocating physical custody of a child; requiring court to designate which parent is
21 entitled to tax deductions and exemptions when equal (50-50) custody is ordered;
22 clarifying that amendments made during regular session of the Legislature, 2022, are
23 prospective; and declaring custodial orders entered prior to the effective date of the
24 amendments to chapter 48 during the regular session of the Legislature, 2022, remain in
25 full force and effect until judicially modified.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 9. ALLOCATION OF CUSTODIAL RESPONSIBILITY AND DECISION-
MAKING RESPONSIBILITY OF CHILDREN.**

§48-9-102. Objectives; best interests of the child.

(a) The primary objective of this article is to serve the child's best interests, by facilitating:

(1) Stability of the child;

(2) Collaborative Parental ~~parental~~ planning and agreement about the child's custodial arrangements and upbringing;

(3) Continuity of existing parent-child attachments;

(4) Meaningful contact between a child and each parent, and which is rebuttably presumed to be equal (50-50) custodial allocation of the child;

(5) Caretaking and parenting relationships by adults who love the child, know how to provide for the child's needs, and who place a high priority on doing so;

(6) Security from exposure to physical or emotional harm;

(7) Expeditious, predictable decision-making and avoidance of prolonged uncertainty respecting arrangements for the child's care and control; and

(8) Meaningful contact between a child and his or her siblings, including half-siblings.

(b) A secondary objective of this article is to achieve fairness between the parents consistent with the rebuttable presumption of equal (50-50) custodial allocation.

§48-1-102a Presumption in favor of equal (50-50) custodial allocation.

There shall be a presumption, rebuttable by a preponderance of the evidence, that equal (50-50) custodial allocation is in the best interest of the child. If the presumption is rebutted, the court shall, absent an agreement between the parents as to all matters related to custodial allocation, construct a parenting time schedule which maximizes the time each parent has with the child and is consistent with ensuring the child's welfare.

§48-9-203. Proposed temporary parenting plan; temporary order; amendment. ~~vacation of~~

order.

(a) A parent seeking a temporary order relating to parenting shall file and serve a proposed temporary parenting plan by motion. The other parent, if contesting the proposed temporary parenting plan, shall file and serve a responsive proposed parenting plan. Either parent may move to have a proposed temporary parenting plan entered as part of a temporary order. The parents may enter an agreed temporary parenting plan at any time as part of a temporary order. The proposed temporary parenting plan may be supported by relevant evidence and shall be verified and shall state at a minimum the following:

(1) The name, address, and length of residence with the person or persons with whom the child has lived for the preceding ~~twelve~~ 12 months;

(2) The performance by each parent during the last 12 months of the parenting functions relating to the daily needs of the child;

(3) The parents' work and child-care schedules for the preceding ~~twelve~~ 12 months;

(4) The parents' current work and child-care schedules; and

(5) Any of the circumstances set forth in §48-9-209 of this code that are likely to pose a serious risk to the child ~~and that~~ or that otherwise warrant limitation on the award to a parent of temporary residence or time with the child pending entry of a permanent parenting plan.

(b) At the hearing, the court shall enter a temporary parenting order incorporating a temporary parenting plan which includes:

(1) A schedule for the child's time with each parent when appropriate;

(2) Designation of a temporary residence for the child;

(3) Allocation of decision-making authority, if any. Absent allocation of decision-making authority consistent with §48-9-207 of this code, neither party shall make any decision for the child other than those relating to day-to-day or emergency care of the child, which shall be made by the party who is present with the child;

(4) Provisions for temporary support for the child; and

(5) Restraining orders, if applicable. And

~~(6) Specific findings of fact upon which the court bases its determinations.~~

~~(c) A parent may make a motion for an order to show cause and the court may enter a temporary order, including a temporary parenting plan, upon a showing of necessity.~~

(c) If the parents have not agreed upon the allocation of physical custody of the child, then the allocation shall be made by the court upon the sworn testimony of the parents and their witnesses at a hearing.

(d) Upon request of either parent for an equal (50-50) allocation of physical custody, the presumption provided in §48-1-102a of this code applies.

(e) If the temporary allocation of physical custody is not on an equal (50-50) basis, it must contain specific findings of fact by the court, based upon the sworn testimony presented at the hearing, as to the reasons under §48-9-209 of this code that the court ordered the custodial allocation, along with the court's legal conclusions supporting its decision.

(f) A parent who has sought and been denied equal (50-50) physical custody, or who has been denied any physical custody, may file an interlocutory appeal with the West Virginia Intermediate Court of Appeals as to the temporary custodial allocation of the child or children, and the Intermediate Court of Appeals shall provide an expedited review of the order.

~~(d)~~ (g) A parent may move for amendment of a temporary parenting plan, and the court may order amendment to the temporary parenting plan, if the amendment conforms to the limitations of and considerations required by §48-9-209 of this code and is in the best interest of the child. The court's order modifying the plan shall be in writing and contain specific findings of fact upon which the court bases its determinations.

§48-9-204. Criteria for temporary parenting plan.

(a) After considering the proposed temporary parenting plan filed pursuant to §48-9-203 of this code and other relevant evidence presented, the court shall make a temporary parenting plan that is in the best interest of the child, which shall be in writing and contain specific findings

of fact upon which the court bases its determinations. In making this determination, the court shall give particular consideration to:

(1) Which parent has taken greater responsibility during the last 12 months for performing caretaking and/or parenting functions relating to the daily needs of the child; and

(2) Which parenting arrangements will cause the least disruption to the child's emotional stability while the action is pending.

(b) The court shall also consider the factors used to determine residential provisions in the permanent parenting plan.

(c) Upon credible evidence of one or more of the circumstances set forth in §48-9-209(a) of this code, the court shall issue a temporary order limiting or denying access to the child as required by that section, in order to protect the child or the other party, pending adjudication of the underlying facts. The temporary order shall be in writing and include specific findings of fact supporting the court's determination.

(d) Expedited procedures shall be instituted to facilitate the prompt issuance of a parenting plan.

(e) In establishing a temporary parenting plan, there shall be a presumption in favor of equal (50-50) physical custody which is rebuttable by a preponderance of the evidence, to be evaluated and considered in accordance with the criteria set forth in §48-9-209 of this code.

§48-9-205. Permanent parenting plan.

(a) A party seeking a judicial allocation of custodial responsibility or decision-making responsibility under this article shall file a proposed parenting plan with the court. Parties may file a joint plan. A proposed plan shall be verified and shall state, to the extent known or reasonably discoverable by the filing party or parties:

(1) The name, address, and length of residence of any adults with whom the child has lived for one year or more, or in the case of a child less than one year of age, any adults with whom the child has lived since the child's birth;

(2) The name and address of each of the child's parents and any other individuals with standing to participate in the action under §48-9-103 of this code;

(3) A description of the allocation of caretaking and other parenting responsibilities performed by each person named in §48-9-205(a)(1) and §48-9-205(a)(2) of this code;

(4) A description of the work and child-care schedules of any person seeking an allocation of custodial responsibility and any expected changes to these schedules in the near future;

(5) A description of the child's school and extracurricular activities;

(6) A description of any of the ~~limiting factors as~~ criteria described in §48-9-209 of this code that are present, including any restraining orders against either parent to prevent domestic or family violence, by case number and jurisdiction;

(7) Required financial information; and

(8) A description of the known areas of agreement and disagreement with any other parenting plan submitted in the case.

The court shall maintain the confidentiality of any information required to be filed under this section when the person giving that information has a reasonable fear of domestic abuse, and disclosure of the information would increase that fear.

(b) The court shall develop a process to identify cases in which there is credible information that child abuse or neglect as defined in §49-1-201 of this code or domestic violence as defined in §48-27-202 of this code has occurred. The process shall include assistance for possible victims of domestic abuse in complying with §48-9-205(a)(6) of this code and referral to appropriate resources for safe shelter, counseling, safety planning, information regarding the potential impact of domestic abuse on children, and information regarding civil and criminal remedies for domestic abuse. The process shall also include a system for ensuring that jointly submitted parenting plans that are filed in cases in which there is credible information that child abuse or domestic abuse has occurred receive the court review that is mandated by §48-9-202(b) of this code.

(c) Upon motion of a party and after consideration of the evidence, the court shall order a parenting plan consistent with the provisions of §48-9-206 through §48-9-209 of this code, containing:

(1) A provision for the child's living arrangements and each parent's custodial responsibility, which shall include either:

(A) A custodial schedule that designates in which parent's home each minor child will reside on given days of the year; or

(B) A formula or method for determining a schedule in sufficient detail that, if necessary, the schedule can be enforced in subsequent proceedings by the court;

(2) An allocation of decision-making responsibility as to significant matters reasonably likely to arise with respect to the child;

(3) A provision consistent with §48-9-202 of this code for resolution of disputes that arise under the plan and remedies for violations of the plan; and

(4) Provisions for the financial support of the child or children; and

~~(4)~~ (5) A plan for the custody of the child ~~should~~ if one or both of the parents as a member of the National Guard, a reserve component, or an active duty component ~~be~~ are mobilized, deployed, or called to active duty.

(d) A parenting plan may, at the court's discretion, contain provisions that address matters that are expected to arise in the event of a party's relocation, or provide for future modifications in the parenting plan if specified contingencies occur.

§48-9-206. Allocation of custodial responsibility at final hearing.

(a) Unless otherwise resolved by agreement of the parents under §48-9-201 of this code or unless harmful to the child, the court shall allocate custodial responsibility so that, except to the extent required under §48-9-209 of this code, the custodial time the child spends with each parent ~~may be expected to achieve any of the following objectives:~~ shall be equal ("50-50").

~~(1) To permit the child to have a meaningful relationship with each parent who has~~

6 ~~performed a reasonable share of parenting functions;~~

7 ~~(2) To accommodate, if the court determines it is in the best interests of the child, the firm~~
8 ~~and reasonable preferences of a child who is 14 years of age or older; and to accommodate, if~~
9 ~~the court determines it is in the best interests of the child, the firm and reasonable preferences of~~
10 ~~a child under 14 years of age, but sufficiently matured that he or she can intelligently express a~~
11 ~~voluntary preference for one parent;~~

12 ~~(3) To keep siblings together when the court finds that doing so is necessary to their~~
13 ~~welfare;~~

14 ~~(4) To protect the child's welfare when, under an otherwise appropriate allocation, the child~~
15 ~~would be harmed because of a gross disparity in the quality of the emotional attachments between~~
16 ~~each parent and the child, or in each parent's demonstrated ability or availability to meet a child's~~
17 ~~needs;~~

18 ~~(5) To take into account any prior agreement of the parents that, under the circumstances~~
19 ~~as a whole, including the reasonable expectations of the parents in the interest of the child, would~~
20 ~~be appropriate to consider;~~

21 ~~(6) To avoid an allocation of custodial responsibility that would be extremely impractical~~
22 ~~or that would interfere substantially with the child's need for stability in light of economic, physical,~~
23 ~~or other circumstances, including the distance between the parents' residences, the cost and~~
24 ~~difficulty of transporting the child, the parents' and child's daily schedules, and the ability of the~~
25 ~~parents to cooperate in the arrangement;~~

26 ~~(7) To~~ (b) The court shall apply the principles set forth in §48-9-403(d) of this code if one
27 parent relocates or proposes to relocate at a distance that will impair the ability of a parent to
28 exercise the amount of custodial responsibility that would otherwise be ordered under this section.

29 ~~(8) To consider the stage of a child's development;~~

30 ~~(9) To consider which parent will encourage and accept a positive relationship between~~
31 ~~the child and the other parent, including which parent is more likely to keep the other parent~~

~~involved in the child's life and activities;~~

~~(10) To take into account the preference that time allocated to the parent resulting in the child being under the care and custody of that parent is preferred to time allocated to the parent resulting in the child being under the care or custody of a family member of that parent or a third party; and~~

~~(11) To allow reasonable access to the child by telephone or other electronic contact, which shall be defined in the parenting plan;~~

(c) The court may consider the allocation of custodial responsibility arising from temporary agreements made by the parties after separation if the court finds, by a preponderance of the evidence, that such agreements were consensual. The court shall afford those temporary consensual agreements the weight the court believes the agreements are entitled to receive, based upon the evidence. The court may not consider the temporary allocation of custodial responsibility imposed by a court order on the parties unless both parties agreed to the allocation provided for in the temporary order.

~~(c) If the court is unable to allocate custodial responsibility under §48-9-206(a) of this code because the allocation under §48-9-206(a) of this code would be harmful to the child, or because there is no history of past performance of caretaking functions, as in the case of a newborn, or because the history does not establish a pattern of caretaking sufficiently dispositive of the issues of the case, the court shall allocate custodial responsibility based on the child's best interest, taking into account the factors in considerations that are set forth in this section and in §48-9-209 and §48-9-403(d) of this code. and preserving to the extent possible this section's priority on the share of past caretaking functions each parent performed: *Provided*, That if either parent or both has demonstrated reasonable participation in parenting functions as defined in §48-1-235.2 of this code, the court cannot rely solely on caretaking functions, and shall consider the parents' participation in parenting functions.~~

(d) In determining how to schedule the custodial time allocated to each parent, the court

58 ~~shall take account of the economic, physical, and other practical circumstances such as those~~
59 ~~listed in §48-9-206(a)(6) of this code.~~

60 ~~(e)~~ (d) In the absence of an agreement of the parents, the court's determination of
61 allocation of custodial responsibility under this section shall be made pursuant to a final hearing,
62 which shall ~~not~~ be conducted ~~exclusively~~ by the presentation of evidence. ~~by proffer.~~ The court's
63 order determining allocation of custodial responsibility shall be in writing, and include specific
64 findings of fact and conclusions of law supporting the determination.

§48-9-207. Allocation of significant decision-making responsibility at temporary or final hearing.

1 (a) Unless otherwise resolved by agreement of the parents under §48-9-201 of this code,
2 the court shall allocate responsibility for making significant life decisions on behalf of the child,
3 including the child's education and health care, to one parent or to ~~two~~ both parents jointly, in
4 accordance with the child's best interest, in light of the ability or inability of the parents, based
5 upon the evidence before the court, to work collaboratively and in cooperation with each other in
6 decision-making on behalf of the child, and the existence of any considerations as set forth in
7 §48-9-209 of this code.

8 ~~(1) The allocation of custodial responsibility under §48-9-206 of this code;~~

9 ~~(2)~~ (1) The level of each parent's participation in past decision making on behalf of the
10 child;

11 ~~(3)~~ (2) The wishes of the parents; and

12 (4) (3) The level of ability and cooperation the parents have demonstrated in decision-
13 making on behalf of the child.

14 ~~(5) Prior agreements of the parties; and~~

15 ~~(6) The existence of any limiting factors, as set forth in section 9-209 of this article.~~

16 (b) If each of the child's ~~legal~~ parents has been exercising a reasonable share of the
17 parenting functions for the child, there shall be a rebuttable presumption ~~the court shall presume~~

that an allocation of decision-making responsibility to both parents jointly is in the child's best interests. The presumption may be rebutted ~~is overcome if there is a history of domestic abuse, neglect, or abandonment, or~~ by a showing that joint allocation of decision-making responsibility is not in the child's best interest upon proof by a preponderance of the evidence of relevant factors under §48-9-209 of this code. ~~Provided, That the~~ The court's determination shall be in writing and include specific findings of fact supporting any determination that joint allocation of decision-making responsibility is not in the child's best interest.

(c) Unless otherwise ~~provided or~~ agreed to by the parents or ordered by the court, each parent who is exercising custodial responsibility shall be given sole responsibility for day-to-day decisions for the child, while the child is in that parent's care and control, including emergency decisions affecting the health and safety of the child.

§48-9-208. Criteria for parenting plan; Parental dispute resolution.

(a) If provisions for resolving parental disputes are not ordered by the court pursuant to a parenting agreement ~~under section 9-201~~, in §48-9-201 of this code, the court shall order a method of resolving disputes that serves the child's best interest in light of:

(1) The parents' wishes and the stability of the child;

(2) Circumstances, including, but not limited to, financial circumstances, that may affect the parents' ability to participate in a prescribed dispute resolution process; and

(3) The existence of any ~~limiting factor as set forth in section 209 of this article.~~ §48-9-209 of this code.

(b) The court may order a non-judicial process of dispute resolution by designating with particularity the person or agency to conduct the process or the method for selecting ~~such a~~ person or agency. The disposition of a dispute through a non-judicial method of dispute resolution that has been ordered by the court without prior parental agreement is subject to de novo judicial review. If the parents have agreed in a parenting plan or by agreement thereafter to a binding resolution of their dispute by non-judicial means, a decision by such means is binding upon the

parents and must be enforced by the court, unless it is shown to be contrary to the best interests of the child, beyond the scope of the parents' agreement, or the result of fraud, misconduct, corruption, or other serious irregularity.

(c) This section is subject to the limitations imposed by ~~section two hundred two of this article.~~ §48-9-202 of this code.

§48-9-209. Parenting plan; ~~limiting factors.~~ considerations.

~~(a) If either of the parents so requests, or upon receipt of credible information thereof, the court shall determine whether a parent who would otherwise be allocated responsibility under a parenting plan:~~ When entering an order approving or implementing a temporary or permanent parenting plan order, including custodial allocation, the court shall consider whether a parent:

(1) Has abused, neglected, or abandoned a child, as defined by state law;

(2) Has sexually assaulted or sexually abused a child as those terms are defined in §61-8B-1 *et seq.* and §61-8D-1 *et seq.* of this code;

(3) Has committed domestic violence, as defined in §48-27-202 of this code;

(4) Has overtly or covertly, persistently violated, interfered with, impaired, or impeded the rights of a parent or a child with respect to the exercise of shared authority, residence, visitation, or other contact with the child, except in the case of actions taken for the purpose of protecting the safety of the child or the interfering parent or another family member, pending adjudication of the facts underlying that belief; or

(5) Has made one or more fraudulent reports of domestic violence or child abuse: *Provided*, That a person's withdrawal of or failure to pursue a report of domestic violence or child support shall not alone be sufficient to consider that report fraudulent.

(b) If a parent is found to have engaged in any activity specified by subsection (a) of this section, the court shall impose limits that are reasonably calculated to protect the child or child's parent from harm. The limitations that the court shall consider include, but are not limited to:

(1) An adjustment of the custodial responsibility of the parents, including but not limited to:

(A) Increased parenting time with the child to make up for any parenting time the other parent lost as a result of the proscribed activity;

(B) An additional allocation of parenting time in order to repair any adverse effect upon the relationship between the child and the other parent resulting from the proscribed activity; or

(C) The allocation of exclusive custodial responsibility to one of ~~them~~ the parents;

(2) Supervision of the custodial time between a parent and the child;

(3) Exchange of the child between parents through an intermediary, or in a protected setting;

(4) Restraints on the parent from communication with, or proximity to, the other parent or the child;

(5) A requirement that the parent abstain from possession or consumption of alcohol or nonprescribed drugs while exercising custodial responsibility and in the ~~twenty-four~~ 24-hour period immediately preceding such exercise;

(6) Denial of overnight custodial responsibility;

(7) Restrictions on the presence of specific persons while the parent is with the child;

(8) A requirement that the parent post a bond to secure return of the child following a period in which the parent is exercising custodial responsibility or to secure other performance required by the court;

(9) A requirement that the parent complete a program of intervention for perpetrators of domestic violence, for drug or alcohol abuse, or a program designed to correct another factor; or

(10) Any other constraints or conditions that the court ~~deems~~ determines to be necessary to provide for the safety of the child, a child's parent, or any person whose safety immediately affects the child's welfare.

(c) If a parent is found to have engaged in any activity specified in subsection (a) of this section, the court may not allocate custodial responsibility or decision-making responsibility to that parent without making special written findings that the child and other parent can be

adequately protected from harm by such limits as it may impose under subsection (b) of this section. The parent found to have engaged in the behavior specified in subsection (a) of this section has the burden of proving that an allocation of custodial responsibility or decision-making responsibility to that parent will not endanger the child or the other parent.

(d) If the court determines, based on the investigation described in part ~~three~~ III of this article or other evidence presented to it, that an accusation of child abuse or neglect, or domestic violence made during a child custody proceeding is false and the parent making the accusation knew it to be false at the time the accusation was made, the court may order reimbursement to be paid by the person making the accusations of costs resulting from defending against the accusations. ~~Such~~ The reimbursement may not exceed the actual reasonable costs incurred by the accused party as a result of defending against the accusation and reasonable attorney's fees incurred.

(e) (1) A parent who believes he or she is the subject of activities by the other parent described in subdivision (5), ~~of~~ subsection (a) of this section, may move the court pursuant to ~~subdivision (4), subsection (b), section one hundred and one, article five, chapter forty-nine §49-~~ 5-101(b)(4) of this code for the Department of Health and Human Resources to disclose whether the other parent was the source of the allegation and, if so, whether the department found the report to be:

- (A) Substantiated;
- (B) Unsubstantiated;
- (C) Inconclusive; or
- (D) Still under investigation.

(2) If the court grants a motion pursuant to this subsection, disclosure by the Department of Health and Human Resources shall be in camera. The court may disclose to the parties information received from the department only if it has reason to believe a parent knowingly made a false report.

73 (f) In determining whether the presumption for an equal (50-50) allocation of physical
74 custody has been rebutted, a court shall consider all relevant factors including any of the following:

75 (1) The factors set forth in subdivision (a) of this section;

76 (2) Whether the child:

77 (A) Was conceived as a result of sexual assault or sexual abuse by a parent as set forth
78 in §48-9-209a of this code;

79 (B) Has special needs, a chronic illness, or other serious medical condition and would
80 receive more appropriate care under another custodial allocation;

81 (C) Is a nursing child less than six months of age, or less than one year of age if the child
82 receives substantial nutrition through nursing; or

83 (D) Will be separated from his or her siblings or the arrangement would otherwise disrupt
84 the child's opportunities to bond with his or her siblings;

85 (3) Whether a parent:

86 (A) Is in arrears or currently noncompliant with a previous order of the court regarding
87 payment of child support payments for another child;

88 (B) Is unwilling to seek necessary medical intervention for the child who has a serious
89 medical condition;

90 (C) Has a chronic illness or other condition that renders him or her unable to provide proper
91 care for the child;

92 (D) Has not been significantly involved in the child's life prior to the hearing, except when
93 the lack of involvement is the result of actions on the part of the other parent which were, without
94 good cause, designed to deprive the parent of contact and involvement with his or her child or
95 children without good cause;

96 (E) Has professional responsibilities which render him or her unable to devote adequate
97 time to the child;

(F) Has a work schedule that causes the child or children to be in the care of a third party rather than the other available parent;

(G) Does not have a stable housing situation: *Provided*, That a parent's temporary residence with a child in a domestic violence shelter shall not constitute an unsafe housing situation; or

(H) Is unwilling or unable to perform caretaking functions for the child as required by §48-1-210 of this code;

(4) Whether a parent, partner, or other person living in that parent's household:

(A) Has been adjudicated in an abuse and neglect proceeding to have abused or neglected a child, or has a pending abuse and neglect case;

(B) Has been judicially determined to have committed domestic violence or has a pending domestic violence case;

(C) Has a felony criminal record;

(D) Is addicted to a controlled substance or alcohol;

(E) Has threatened or has actually detained the child with the intent to retain or conceal the child from the other parent or from a third person who has legal custody: *Provided*, That a parent's temporary residence with the child in a domestic violence shelter shall not be construed as evidence of the parent's intent to retain or conceal the child from the other parent; or

(E) Has been involuntarily committed to a mental health facility, or suffers from a serious mental illness;

(5) Whether an equal (50-50) physical allocation is:

(A) Impractical due to the physical distance between the parents' residences;

(B) Impractical due to the cost and difficulty of transporting the child;

(C) Impractical due to each parent's and the child's daily schedules;

(D) Would disrupt the education of the child; or

(E) Contrary to the firm and reasonable preferences of a child who is 14 years of age or

older; and to accommodate, if the court determines it is in the best interests of the child, the firm and reasonable preferences of a child under 14 years of age, but sufficiently matured that he or she can intelligently express a voluntary preference for one parent;

(6) Whether the parents cannot work cooperatively and collaboratively in the best interest of the child; or

(7) Whether a parent will encourage and accept a positive relationship between the child and the other parent, including which parent is more likely to keep the other parent involved in the child's life and activities.

§48-9-401. Modification upon showing of changed circumstances or harm.

(a) Except as provided in ~~section 9-402 or 9-403~~, §48-9-402 or §48-9-403 of this code, a court shall modify a parenting plan order if it finds, on the basis of facts that were not known or have arisen since the entry of the prior order and were not anticipated ~~therein~~ in the prior order, that a substantial change has occurred in the circumstances of the child or of one or both parents and a modification is necessary to serve the best interests of the child.

(b) In exceptional circumstances, a court may modify a parenting plan if it finds that the plan is not working as contemplated and in some specific way is manifestly harmful to the child, even if a substantial change of circumstances has not occurred.

(c) Unless the parents have agreed otherwise, the following circumstances do not justify a significant modification of a parenting plan except where harm to the child is shown:

(1) Circumstances resulting in an involuntary loss of income, by loss of employment or otherwise, affecting the parent's economic status;

(2) A parent's remarriage or cohabitation, except under the circumstances set forth in §48-9-209(f) of this code; and

(3) Choice of reasonable caretaking arrangements for the child by a legal parent, including the child's placement in day care.

(d) For purposes of subsection (a) of this section, the occurrence or worsening of a limiting

factor, as defined in ~~subsection (a), section 9-209, §48-9-209(a)~~ of this code, after a parenting plan has been ordered by the court, constitutes a substantial change of circumstances and measures shall be ordered pursuant to ~~section 9-209~~ §48-9-209 of this code, to protect the child or the child's parent.

§48-9-402. Modification without showing of changed circumstances.

(a) The court shall modify a parenting plan in accordance with a parenting agreement, unless it finds that the agreement is not knowing and voluntary or that it would be harmful to the child.

(b) The court may modify any provisions of the parenting plan without the showing of ~~change~~ the changed circumstances required by §48-9-401(a) of this code, if the modification is in the child's best interests, and the modification:

(1) Reflects the de facto arrangements under which the child has been receiving care from the petitioner, without objection, in substantial deviation from the parenting plan, for the preceding six months before the petition for modification is filed, provided the arrangement is not the result of a parent's acquiescence resulting from the other parent's domestic abuse;

(2) Constitutes a minor modification in the plan; ~~or~~

(3) Is necessary to accommodate the reasonable and firm preferences of a child who, has attained the age of ~~fourteen~~ 14; or

(4) Is necessary to accommodate the reasonable and firm preferences of a child who, is under the age of ~~fourteen~~ 14 and, in the discretion of the court, is sufficiently matured that he or she can intelligently express a voluntary preference;

(c) Evidence of repeated filings of fraudulent reports of domestic violence or child abuse is admissible in a domestic relations action between the involved parties when the allocation of custodial responsibilities is in issue, and the fraudulent accusations may be a factor considered by the court in making the allocation of custodial responsibilities.

§48-9-602. Designation of custody for the purpose of other state and federal statutes.

1 Solely for the purposes of all other state and federal statutes which require a designation
2 or determination of custody, a parenting plan shall designate the parent with whom the child is
3 scheduled to reside the majority of the time as the custodian of the child. However, this
4 designation shall not affect either parent's rights and responsibilities under a parenting plan. In
5 the absence of such a designation, the parent with whom the child is scheduled to reside the
6 majority of the time is ~~deemed~~ considered to be the custodian of the child for the purposes of such
7 federal and state statutes. When a court orders that custodial allocation shall be on an equal (50-
8 50) basis, the court shall also specify in its order which parent may claim state and federal income
9 tax deductions and exemptions for the child or children.

§48-9-603. Effect of enactment; operative dates.

1 ~~(a) The enactment of this article, formerly enacted as article eleven of this chapter during~~
2 ~~the second extraordinary session of the 1999 Legislature, is prospective in operation unless~~
3 ~~otherwise expressly indicated.~~

4 ~~(b) The provisions of §48-9-202 of this code, insofar as they provide for parent education~~
5 ~~and mediation, became operative on January 1, 2000. Until that date, parent education and~~
6 ~~mediation with regard to custody issues were discretionary unless made mandatory under a~~
7 ~~particular program or pilot project by rule or direction of the Supreme Court of Appeals or a circuit~~
8 ~~court.~~

9 ~~(c) The provisions of this article that authorize the court, in the absence of an agreement~~
10 ~~of the parents, to order an allocation of custodial responsibility and an allocation of significant~~
11 ~~decision-making responsibility became operative on January 1, 2000, at which time the primary~~
12 ~~caretaker doctrine was replaced with a system that allocates custodial and decision-making~~
13 ~~responsibility to the parents in accordance with this article. Any order entered prior to January 1,~~
14 ~~2000, based on the primary caretaker doctrine remains in full force and effect until modified by a~~
15 ~~court of competent jurisdiction.~~

16 ~~(d)~~ (a) The amendments to this chapter ~~made~~ enacted during the 2021 session of the

Legislature shall become applicable upon the effective date of those amendments. Any order entered prior to the effective date of those amendments remains in full force and effect until modified by a court of competent jurisdiction.

(b) The amendments to this chapter enacted during the regular session of the Legislature, 2022, do not constitute a change in circumstances or other basis for modification under §48-9-401 or §48-9-402 of this code.

~~(e)~~ (c) The amendments to this chapter enacted during the regular session of the Legislature, 2022, shall become applicable upon the effective date of those amendments. Any order entered prior to the effective date of those amendments remains in full force and effect until modified by a court of competent jurisdiction.

(d) The amendments to this chapter enacted during the regular session of the Legislature, 2022, shall be known as the 2022 Best Interest of the Child Act.